IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 629 of 2006.

Decided on: 11.06.2007.

Power Grid Corporation of India Ltd. … Petitioner.

Versus

Shri Bhalia. … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner: Mr. K.D. Shreedhar, Advocate.

For Respondent: Mr. Ramesh Sharma, Advocate vice Sh. N.K. Thakur, Advocate.

Rajiv Sharma, Judge:

This petition arises out of the award dated 22.3.2006 announced by the Additional District Judge, Shimla under Section 16(3) of the Indian Telegraph Act, 1885.

The brief facts necessary for the adjudication of this petition are that the respondent is owner in possession of the land comprised in Khasra Nos.281 and 375, Khewat No.6 min, Khatauni No.6, measuring 0-51-80 hectares situated in Mohal Bagain, Tehsil Kotkhai, District Shimla, H.P. The respondent had also raised orchard on this land and he was earning Rs.50,000/- per annum.

Whether reporters of local papers may be allowed to see the judgment? No.

The petitioner-Corporation took the possession of part of this land in May, 1998 for construction of two towers for laying the high power tension line without the consent of the respondent resulting in up-rooting of 24 apple trees. He was paid only Rs.16,000/- as compensation by the petitioner-Corporation. He filed a petition before the learned Additional District Judge under Sections 10 and 16(3) of the Indian Telegraph Act, 1885. The petitioner-Corporation had filed reply to the same. The learned Additional District Judge had passed the award on 22.3.2006 awarding a sum of Rs.1,44,000/- as compensation in favour of the respondent.

Mr. K.D. Shreedhar appearing on behalf of the petitioner-Corporation had strenuously argued that the award dated 22.3.2006 is not sustainable in the eyes of law. Mr. Ramesh Sharma, Advocate appearing vice Mr. N.K. Thakur, Advocate for the respondent had supported the award dated 22.3.2006.

I have heard the parties and gone through the record.

It is admitted case of the parties that 24 apple trees of the respondent were damaged while constructing two towers for laying high power tension line. Shri B.S. Bajwa has appeared as PW-2 and had deposed that he had assessed the damage caused to the apple trees of the respondent at Rs.3,16,534/-. PW-3 Shri Gian Chand had deposed that 24 apple trees of the respondent were damaged by the petitioner-Corporation at the time of construction of towers. Shri Jawahar Kaith, who was posted as Investigator, Labour Bureau, Shimla while appearing as PW-4 had deposed that there was an increase of 1411 per cent in the price index of

Himachal Pradesh during the period from 1966 to 2001. Shri Rajeshwar Parmar, Horticulture Development Officer, Kotkhai while appearing as PW-6 had deposed that the average life of apple trees is about 45 years and the apple plant starts bearing fruits after 5 to 6 years.

The petitioner-Corporation had examined its Deputy Manager as RW-1. He had admitted that two towers were installed on the land of the respondent and he was paid compensation of Rs.22,175/-. Shri Sukh Ram while appearing as RW-3 had deposed that the H.P. Government had adopted the assessment criteria for fruit bearing trees in the year 2001 and the respondent was only entitled to a sum of Rs.40,954/-. Shri S.S. Mehta, Assistant Project Officer, Directorate of Horticulture had placed on record the photo copy of revised formula for evaluation of fruit bearing trees in Himachal Pradesh for the year 2001.

This Court has held in **Union of India and others Versus Khazana Ram and others** reported in 1998 (1) SLC, 479 as under:-

> ***"So far the present case is concerned, the year of assessment is 1989 and if we rely upon the Price Index filed along with the replies to the stay applications in the writ petitions, the Price Index has arisen from 79.7 in the year 1966 to 428.8 in the year 1988 taking the Price Index as 100 for the base year 1970-71. The Price Index for the year 1989 has been shown 176.4 by taking 100 for the base year 1981-82. Therefore, the increase from 1966 to 1989 will be approximately five times. Accordingly, we hold that the ends of justice would be met if the claimants are***

given compensation five time of the compensation assessed by the Department as per Annexure PB to the writ petitions and Ext. RW-1/A on the file of the District Judge. Accordingly, the writ petitions are partly allowed, whereas, the revision petitions are dismissed and the impugned awards dated 29.4.1997 passed by District Judge, Bilaspur are modified. No costs."

The learned Additional District Judge had correctly applied the Harbans Singh Formula for determining the assessment for the damage caused to the apple trees of the respondent instead of relying upon the modified formula published for the first time in the year 2001. The damage has been caused to the apple trees of the respondent in the year 1998 and the learned Additional District Judge has correctly taken into consideration the increase in price index from the year 1966 to the year 2001 and thereafter enhanced the compensation from Rs.16,000/- to Rs.1,60,000/-.

There is neither any jurisdictional error nor any procedural irregularity in the award dated 22.3.2006 announced by the learned Additional District Judge.

Accordingly, there is no merit in the writ petition and the same is dismissed. The award dated 22.3.2006 is up-held and interim order dated 23.8.2006 confirmed on 4.1.2007 is vacated. There shall be no order as to costs.

June 11, 2007 **(Rajiv Sharma)**
(sck). **Judge**